IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7852 OF 2006

Sunil Phulchand Lihinar ....Petitioner.
V/s
Sanageeta Sunil Lihinar ....Respondent.

Mr.P.R.Naidu, Adv. For the petitioner.

Mr.Ganesh S. Vaidya, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
3/7/07

PC:

The petitioner is the husband whereas the respondent is the wife. The respondent instituted a petition for divorce against the present petitioner and in the said divorce petition an application claiming interim maintenance for self and three minor children came to be filed. Initially the Family Court has passed an order directing payment of maintenance in the sum of Rs.500/- for the wife and Rs.300/- for each minor children. This Court in another round of litigation had permitted the petitioner to move an appropriate application for modification of the order passed by the Family Court granting interim maintenance. Accordingly the petitioner moved an application claiming modification of the order passed earlier. The rejection of application seeking modification of the order granting interim maintenance has given rise to the filing of the present writ petition. The wife had averred that the petitioner is earning a sum of Rs.1,80,000/- per year whereas the petitioner claims that he is not earning anything and while working at newspaper stall he was drawing monthly salary of Rs.1200/-.

The petitioner also claims that the wife herself is earning by working as vegetable vendor. Taking over all view of the matter the Family Court has found that even a labour can ear Rs.100/- a day and being of the opinion that the petitioner is obliged to maintain three children and wife has not granted modification as prayed for and maintained the order directing payment of interim maintenance of Rs.500/-for wife and Rs.300/- each of the minor children. The Family Court has also directed that in the event if the amount of maintenance is not paid within a period of two months the petitioner's defence shall be struck of. Perused the order. The Family Court has taken possible view of the matter. Hence no interference in exercise of writ jurisdiction is called for. At this stage learned counsel for the petitioner submits that even after striking of the defence of the petitioner, petitioner has the right to participate in the proceedings and cross examine the respondent and her witnesses. It shall be open for the petitioner to assert the said right before the Family Court and if in case any adverse order is passed the petitioner shall be at liberty to challenge the same by taking recourse to appropriate proceedings. In the result writ petition stands summarily dismissed. C.C. Expedited.

3.7.07